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09/737,209	12/14/2000	Charles A. Bastyr	11306.1	1339

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EXAMINER

MATHEW, FENN C

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 01/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/737,209

Applicant(s)

BASTYR ET AL.

Examiner

Fenn Mathew

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-16, 18 and 20-25 is/are rejected.
- 7) ☒ Claim(s) 6, 7, 17 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 9-10, and 21, are rejected under 35 U.S.C. 102(b) as being anticipated by Engel et al. (U.S. Patent No. 5,244,446). Engel discloses an exercise device comprising a first arm (114) having a first and second end, a second arm (161) having a first and second end, a joint assembly (170) defining an axis of rotation, the first end of the first arm being attached to the joint assembly to establish a fixed relationship between the first arm and the axis, and the first end of the second arm being pivotally attached to the joint assembly for rotation of the second arm about the axis in a first direction, means (101) attached to the second end of the first arm for stabilization, and means mounted on the joint assembly for establishing resistance to rotation.
3. Referring to claim 9, Engel discloses stabilizing means consisting of a footrest.
4. Referring to claim 10, Engel discloses a handle attached to the second end of the second arm.
5. Referring to claim 21, Engel discloses a method for using an exercise device comprising the steps of providing an exercise device including a first arm having a first end and a second end, a second arm having a first end and second end, a joint assembly defining an axis of rotation, the first end of the first arm being attached to the

joint assembly to establish a fixed relationship between the first arm and the axis, with the first end of the second arm being pivotally attached to the joint assembly for rotation of the second arm about the axis in a first direction and in a second direction, establishing a resistance to the rotation of the second arm in the first direction and stabilizing the exercise device at the second end of the first arm of the exercise device.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Engel et al. The feature of having handle be adjustable is a matter of design choice well within the knowledge of the skilled artisan, as a skilled artisan would provide an adjustable handle depending on user size.

8. Claims 2-5, 8, 13-16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engel et al. (U.S. Patent No. 5,244,446) in view of Ferber (U.S. Patent No. 5,445,581) and Haaheim (U.S. Patent No. 4,618,139). Referring to claim 2, Engel discloses the claimed device including a shaft mounted on the joint assembly, but lacks a one-way clutch member. Haaheim teaches an exercise device including a clutch member (see abstract). It would have been obvious to one having ordinary skill in the art at the time of invention to provide the device of Engel with a clutch member as

taught by Haaheim in order to prevent the rotational resistance assembly from rotating in an unwanted direction. Further, Engel, does not teach the specific structure of the joint assembly. Ferber teaches an analogous device including a cone member (37) having a surface, and a cup member (35) having a surface dimensioned for mating engagement with the surface of the cone member at an interface there between to establish resistance. It would have been obvious to provide Engel, as modified above, with the cone member and cup member taught by Ferber in order to further effect resistance during exercise.

9. Referring to claim 3, Engel, as modified by Haaheim and Ferber above discloses a plunger (Ferber 45) a force transfer mechanism positioned between the plunger and the cone member (18), and a rotatable knob (Engel 151).

10. Referring to claim 4, Engel, as modified by Haaheim and Ferber above discloses the surface of the cone member and cup member tapered.

11. Referring to claim 5, Engel, as modified by Haaheim and Ferber above discloses a spring (Ferber 32 and a thrust bearing (19).

12. Referring to claim 8, Engel, as modified by Haaheim and Ferber above discloses a friction liner positioned at the interface between the surface of the cone member and the surface of the cup member.

13. Referring to claim 13, Engel discloses an exercise device comprising a first arm (114) having a first and second end, a second arm (161) having a first and second end, a joint assembly (170) defining an axis of rotation, the first end of the first arm being attached to the joint assembly to establish a fixed relationship between the first arm and

the axis, and the first end of the second arm being pivotally attached to the joint assembly for rotation of the second arm about the axis in a first direction, means (101) attached to the second end of the first arm for stabilization, and means mounted on the joint assembly for establishing resistance to rotation. Engel discloses the claimed device including a shaft mounted on the joint assembly, but lacks a one-way clutch member. Haaheim teaches an exercise device including a clutch member (see abstract). It would have been obvious to one having ordinary skill in the art at the time of invention to provide the device of Engel with a clutch member as taught by Haaheim in order to prevent the rotational resistance assembly from rotating in an unwanted direction. Further, Engel does not teach the specific structure of the joint assembly. Ferber teaches an analogous device including a cone member (37) having a surface, and a cup member (35) having a surface dimensioned for mating engagement with the surface of the cone member at an interface there between to establish resistance. It would have been obvious to provide Engel, as modified above, with the cone member and cup member taught by Ferber in order to further effect resistance during exercise.

14. Referring to claim 14, Engel, as modified by Haaheim and Ferber above, discloses a foot pedal attached to the second end of the first arm for stabilization of the first arm.

15. Referring to claim 15, Engel, as modified by Haaheim and Ferber above, discloses the surfaces of the cone member and cup member being tapered. (See Ferber fig. 1).

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16. Referring to claim 16, Engel, as modified by Haaheim and Ferber above discloses a plunger (Ferber 45) a force transfer mechanism positioned between the plunger and the cone member (18), and a rotatable knob (Engel 151).

17. Referring to claim 20, Engel, as modified by Haaheim and Ferber above discloses a friction liner positioned at the interface between the surface of the cone member and the surface of the cup member.

18. Referring to claim 22-24, Engel, as modified by Haaheim and Ferber above have disclosed the claimed structure. The method of use would have been obvious to one with ordinary skill in the art.

19. Claims 12, 18, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engel in view of Haaheim, and Ferber as applied to claims above, and further in view of Delman (U.S. Patent No. 6,244,988). The modified Engel device discloses the claimed invention except for a position/load sensor. Delman teaches an exercise device using a sensor that generates signals of magnitude of resistance and a computer for monitoring the signals. It would have been obvious to one having ordinary skill in the art at the time of invention to provide the modified Engel device with the load sensor and computer taught by Delman in order to allow a user to have exact values of resistance during exercise.

***Allowable Subject Matter***

20. Claims 6-7, 17, and 19 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the

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limitations of the base claim and any intervening claims. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to disclose or make obvious the feature of a spring loaded detent being mounted on the cup member to urge against the knob to provide an aural signal in response to the rotation of the knob. The prior art also fails to disclose an exercise device having a cup member with an annular groove centered on an axis of rotation and lying a plane substantially perpendicular thereto.

### ***Conclusion***

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Krahner et al.                      U.S. Patent No. 6,436,058

Mattox et al.                      U.S. Patent No. 4,385,760

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



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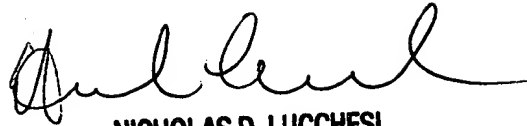
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January 13, 2003

A handwritten signature in black ink, appearing to read "D. Lucchesi", written in a cursive style.

**NICHOLAS D. LUCCHESI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700**